

## 37 Am. Jur. 2d Fraud and Deceit § 32

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### Fraud and Deceit

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#### II. Elements and Requisites

##### B. Particular Elements or Considerations

###### 1. In General

## § 32. Necessity of false representation; definiteness

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, Fraud  1 to 7, 26

An actual formal false representation is not essential to an action for deceit since the action may be based on a fraudulent concealment of a material fact<sup>1</sup> or on false pretenses and other fraudulent devices, schemes, or tricks.<sup>2</sup> In the broad sense of the term, however, a false representation of fact is an essential element of fraud either as the basis of an action for damages or as a ground for rescission,<sup>3</sup> and it must be satisfactorily established.<sup>4</sup> However, no particular rule can be laid down as to what false representation will constitute fraud since this necessarily depends on the facts of each case, the relative situation of the parties, and their means of information.<sup>5</sup> To constitute the basis of fraud, the representations must be definite and not mere general statements uncertain in their character.<sup>6</sup> Vague and indefinite statements or representations will not constitute the basis for fraud as a defense or as a ground for a cause of action,<sup>7</sup> and neither will mere conclusory allegations that a person participated or assisted in the commission of a fraud establish the fraudulent representation requirement.<sup>8</sup>

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#### Footnotes

<sup>1</sup> §§ 194, 195.

<sup>2</sup> §§ 48 to 54.

<sup>3</sup> *Landry v. First Nat. Bank in George West*, 814 S.W.2d 86 (Tex. App. Corpus Christi 1991), writ denied, (Dec. 11, 1991); *Gardner v. Gardner*, 190 Wis. 2d 216, 527 N.W.2d 701 (Ct. App. 1994).

<sup>4</sup> §§ 460 to 463.

<sup>5</sup> *National Cash Register Co. v. Townsend Grocery Store*, 137 N.C. 652, 50 S.E. 306 (1905). As to what constitutes actionable false representations, see §§ 59 to 62.

<sup>6</sup> *National School of Cosmeticians v. Magel*, 11 Ohio L. Abs. 534, 1931 WL 2721 (Ct. App. 2d Dist. Miami County 1931); *J.B. Colt Co. v. Wasson*, 15 Ohio App. 484, 1922 WL 1972 (9th Dist. Wayne County 1922).

<sup>7</sup> *J.B. Colt Co. v. Wasson*, 15 Ohio App. 484, 1922 WL 1972 (9th Dist. Wayne County 1922).

<sup>8</sup> *Glatzer v. Scappatura*, 99 A.D.2d 505, 470 N.Y.S.2d 675 (2d Dep’t 1984).